Crown Lands Review

Final Report

July 2003

Ron Perozzo

Introduction

In the summer of 2002, the Government of Manitoba commissioned me to review Crown lands policies, practices and procedures. This review resulted in part from public discussion and concerns over two series of land transactions. One transaction involved the resettlement on Hecla Island of original owners or their families, displaced by the 1970s expropriation of land to create Hecla Island Park. The other was the sale and leasing of certain assets at Gull Harbour marina. Concerns over the number and quality of Cabinet submissions dealing with Crown lands also occasioned the review.

There is an ongoing review of these transactions by the Auditor General, which began before my review. My mandate was not to repeat the work of the Auditor but to complement it by looking at the broader picture of Crown land policies and processes for the administration, sale and lease of Crown land. The hope is that the work of the Auditor General and this review will mesh nicely, with the Auditor providing comments on the conduct of individual transactions and this review concentrating on broader issues.

My review involved several steps:

- Legislation review
- Interviews with government staff, both within Manitoba and other provinces
- Issue identification
- Preparation of an interim report (November 15, 2002)
- Circulation of interim report for comment
- Analysis of comments and preparation of recommendations
- Preparation and circulation of final report

Interim Report

To prepare the Interim Report, I reviewed all major pieces of legislation dealing with Crown land and interviewed officials involved with each of these pieces of legislation. It soon became apparent from the review and interviews that the system was complex and confusing. For this reason, a large portion of the Interim Report, Sections A to D, dealt with describing the intricacies of the legislation (14 Acts) and administration (9 entities) that contribute to the system's complexity and the public's confusion over how the system operates. The original interviewees reviewed the draft report for accuracy and corrections were made.

Section E of the Interim Report presented issues and comments. In that section, issues involving legislation and administration of the various acts were outlined and suggestions for action were made. The final section of the report recommended that senior government officials review the suggestions presented. That review and follow-up discussions have taken place, making it possible to prepare this final report.

Final report

While I have designed the final report to stand on its own, some readers might prefer to read the Interim Report first, for a fuller understanding of the issues. The Interim Report, including the full terms of reference for the review (p.32), is attached.

Unlike the Interim Report, which focussed heavily on describing the complexities of the Crown land system, this final report focuses on recommendations.

Recommendations

The first two recommendations in this section concern the broader issues of legislation and systems review and policy clarity. The report then moves on to more specific recommendations dealing with administrative bodies, policy co-ordination between departments, role clarification and reinforcement, and system transparency. The final three recommendations deal with cottage-lot pricing, the treatment of lodges and handling unsolicited offers.

Revise the Crown Lands Act

A review and revision of the Act would be timely to deal with problematic situations that have grown up over the many years since the original legislation was put in place. The major areas for concern are these:

- Inconsistencies with both provisions in other legislation and duties assigned to various officials
- The Act does not reflect current practice
- Regulation-making powers in the Act may be insufficient

The Crown Lands Act was first enacted in 1934, and I am advised that it has not been significantly altered since, although there have been piecemeal amendments. This has resulted in what may be called inconsistencies. For example under the Crown Lands Act, Cabinet must set the price and terms and conditions for sale of land. Under other acts a Minister is allowed to sell surplus land below a certain value. Under the Crown Lands Act, the Minister responsible for the Act (currently the Minister of Conservation) may sign leases for up to 21 years, yet the Director of Agricultural Crown Lands may enter into leases for as long as 50 years.

The Crown Lands Act does not reflect current practice. Reading the Act leads one to think that the Minister of Conservation designates certain land as Agricultural Crown Land and the administration of that land is then turned over to the Agricultural Crown Lands Branch, subject to the need for Cabinet pricing in the case of sale. What actually happens is that a committee of officials classifies land, generally in the south part of the Province, for agricultural use or multiple uses including agriculture. The administration of that land is then turned over to the Agricultural Crown Lands Branch. Although a lessee may have an option to purchase in the lease, that option is subject to veto for a number or reasons, 39 to be exact. (See the Interim Report, page 41, for a list of reasons to deny sale.)

Finally, counsel has noted that the regulation-making powers in the Act are quite rudimentary, leading to questions about the authority to make regulations.

State Government Philosophy Concerning Crown Land

Senior officials agree that a Crown Lands policy statement would be a useful step. Most noted that current policies date from the 1970s. One department noted the need for more attention to Aboriginal interests and another said that staff were undoubtedly working in a policy vacuum, since a policy review had not taken place recently and certainly not under the current government. Having said this, officials appreciate that land use is a complex subject with many competing interests and that any policy statement is not likely to be black and white. They simply feel that given the long time since the issue has been looked at, a review, even if it only confirms current practices, would be useful.

One of the main issues that a policy statement could address is whether or not there are any leanings for or against the sale of Crown land. Officials in the Department of Agriculture, for example, stated that agricultural land is more highly developed when it is privately owned and that producer groups believe that Crown ownership of agricultural land has restricted the development and more intensive use of these lands. On the other hand, other government officials see a need to preserve land, especially marginal agricultural land, for wildlife habitat and other environmental purposes.

Along the same lines, does the government wish to use Crown land to stimulate development and create employment, especially in the north? Practices vary in other provinces. Some provinces, such as Ontario and British Columbia, which have restricted the sale of some types of Crown land in the past, are said by officials to be re-examining the practice although actual change has yet to take place. Saskatchewan has a practice of providing Crown land to northern municipalities at a nominal value to encourage economic activity.

Establish an Intermediary Body

To reduce the workload of Cabinet, a formal body of political or senior officials should be in place to vet and champion Crown land issues, including recommendations from the Crown Lands Classification Committee (CLCC). The preferred option is reconstituting the Provincial Land Use Committee (PLUC) with the use of a committee of members of the Legislative Assembly or the interdepartmental planning committee of deputy ministers as the other options.

In order to understand this recommendation, some background on the CLCC is required. The origins, mandate, and membership of the CLCC are more fully dealt with in the Interim Report (p.21). Briefly, however, the CLCC is a committee of director or staff-level government officials representing branches involved in the administration of Crown land. It takes its mandate from a 1975 memo from the Premier. Regional bloc planning committees that make recommendations to the CLCC on Crown land classification assist the CLCC in its work.

The CLCC was created to address the issue of making more Crown land available for agricultural development and leasing, particularly in the Parkland area. But over time the committee has evolved into a vehicle for land-use classification and planning in Agro-Manitoba (loosely southern Manitoba) and for classifying land that may have agricultural capability in the remaining areas of the province on a site-specific basis.

Ultimately the CLCC decides which southern Manitoba land will be made available for agricultural lease and the other uses to which this land can be put. The committee also plays a role in determining whether the land will be sold once it is leased. The CLCC circulates the proposed sale to government departments, polling for any objections to the sale. Objections must be based on the specified criteria approved for rejecting an application. (See the Interim Report, page 41, for approved reasons to decline sale.) If the CLCC receives a valid objection, it will not recommend the sale of the land.

Previously the CLCC made recommendations on sale, land use, and land-use policy to the Provincial Land Use Committee of Cabinet (PLUC). This Cabinet committee has not been reconstituted, however, and no other Cabinet committee or body has taken up its work. One of PLUC's duties was to consider whether a CLCC decision concerning the validity of a departmental objection to sale was correct. In the absence of this committee these reviews now go to Cabinet. Burdening Cabinet with these reviews has slowed down the process. It should be noted that it is unusual for a committee such as CLCC to report directly to Cabinet. More usually, a body such as PLUC plays the important role of vetting information and providing background when the issue reached Cabinet. In essence, PLUC played the role that Treasury Board and the Legislative Review Committee serve with respect to financial and legislative matters respectively.

Officials agree that, if there is one step that would aid in the smoother functioning of the present system, it is the reconstitution of PLUC. On the other hand, Cabinet ministers are very busy and competing priorities may not allow the creation of a Cabinet-level

Committee. If that is the case, a number of other possibilities have been suggested in the Interim Report, but the two that hold the most promise are

- setting up a committee of government members of the Legislative Assembly (MLAs)
- Using the existing Inter-departmental Planning Committee of Deputy Ministers (IPB).

The question of which of these two alternatives is best depends in part on another issue—the question of appealing CLCC decisions. As noted earlier, if the CLCC determined that an application to purchase Crown land should not be accepted, the applicant had the ability to ask that PLUC review the decision. Some officials have argued that there is no need for such a review since there is no right to purchase Crown land and mechanisms such as the Ombudsman already exist to review the inappropriate exercise of discretionary decision-making. These officials also argue that the practice is biased towards sale.

The arguments for a review of CLCC decisions are as follows:

- The practice worked in the past.
- It would provide a useful check on officials actions.
- Recourse to the Ombudsman is time consuming.
- A precedent already exists with the Agricultural Lands Appeal Board which deals with conflicts arising from the lease of agricultural Crown land.
- Potential purchasers will often seek redress from the political level in the event of a rejection at the bureaucratic level in any case.

Another factor in making the decision is that other provinces do not have a similar review process. Other provinces, however, do not have as subtle a system as Manitoba. I am told that almost all of the requests for review concern agricultural Crown land and stem from the fact that the land when leased may have had multiple uses. For example, although a section of land may have been leased, half of it may have been cleared and the other half wooded. While cattle may graze in the wooded area without causing damage to wildlife habitat, selling the land could lead to clearing of the wildlife habitat. Fearing such action, one government department or another may object to the sale. If the land that was leased in the first place was clearly suitable for agricultural use only, the conflict may not have occurred. In other provinces, land does not appear to be coded for multiple use. If it is agricultural land, it is available for agricultural use. I note, however, that in Manitoba land may now be sold with a caveat to protect areas such as wildlife habitat, but this system is relatively new and has not been evaluated.

It may be possible to change leasing processes so that such conflicts are minimized, but for the foreseeable future these questions will arise. If the government wishes some political oversight of the process, PLUC remains the preferred option with a committee of MLAs as the next best alternative. If on the other hand, the government believes that the process is clear enough and the requests for political review can be dealt with, IPB could deal with the need for an intermediate review of CLCC recommendations.

Improve Crown land policy co-ordination within the Department of Conservation

It is recommended that an assistant deputy minister with policy development skills be designated responsible for policy development for Crown lands and the CLCC. Adopting this recommendation would not only improve co-ordination of the development and implementation of Crown land policy but would also aid in the smoother functioning of the system.

This person would report through the Deputy to the Minister and Cabinet and be responsible for several tasks:

- guiding policy development
- helping resolve intra-departmental issues quickly
- moving issues that cannot be resolved internally to appropriate decision makers
- ensuring all views are fully canvassed and appropriate external involvement is considered when policy is being developed
- supervising the CLCC.

Review Crown Lands Classification Committee Mandate

The role and mandate of this committee, established in 1972 by memo only, needs to be reviewed, revised if necessary, or confirmed as is and formally adopted. Among other items, this review should consider:

- duties
- reporting relationship
- policy-setting process
- internal disagreement resolution process

- involvement in Crown land sales
- role province-wide

The CLCC process seems to work well in managing tensions over land use. Those who participate, while sometimes frustrated, seem to value it as a forum to solve land-use classification problems. It provides a means for local-level, land-use classification of Crown lands. Nonetheless, its founding memo, over 25 years old, should be reviewed and written as an appropriate mandate and formally adopted. This process would lead to the duties of the committee being considered and described and consideration being given to having the CLCC report to a body or person between it and Cabinet as described in a previous recommendation. The senior officials who reviewed the interim report and commented on a mandate review agreed that, while the CLCC is functioning, its operation would benefit from a membership and mandate review.

The process of setting CLCC policies, especially those allowing objections to dispositions, needs to be more efficient, since the current system leads to lengthy delays. Equally important, internal disagreements should be resolved through a review by the recommended intermediary body.

The issue of whether the CLCC needs to be involved in the sale process should be looked at. It has been suggested that the Lands Branch could handle the circulation of applications to purchase Crown land while the CLCC could concentrate on coding and land use policies. On the surface, this suggestion has merit and should be examined.

Furthermore, consideration should be given to whether the CLCC has a role in northern Manitoba.

Clarify the Roles of the Land Management Services and the Lands Branch

There is a bleeding of jurisdictional boundaries between these two entities that needs to be clarified to avoid confusion and inefficiencies. In examining how best to resolve the confusion, at least two options exist:

- better defining the boundaries, while maintaining two entities
- melding the responsibilities into one entity

Land Management Services, under the Government Services umbrella, is a special operating agency that handles the expropriation and purchase of land for the Manitoba government. It also deals with the sale of certain land. (For further information, see p. 20 of the Interim Report). At the same time, the Lands Branch of Conservation and Land Management Services sometimes provide the same services, raising the question of which branch does what and when.

Other provinces have similar arrangements, that is, they function with two entities. In Ontario, for example, the Ontario Realty Corporation deals with all acquired land or any land that was once Crown land but came under the jurisdiction of another ministry. Its lands branch on the other hand deals only with lands that have never been sold or transferred to another department. Saskatchewan and British Columbia also make firmer distinctions between their responsible entities. If the two branches are to continue, there is a need for be better clarification of roles and jurisdiction.

Melding the responsibilities into one entity was raised by some senior officials. Entering that discussion raises broader issues of the general leasing of land through other government branches such as the Parks and Natural Areas Branch. It may be possible to have one agency or corporation that deals with the sale or lease of all government land and property. Operating agreements and delineation of roles would be required but this approach could put all the expertise required in one place.

Some officials in Conservation question whether the Department has or should have the expertise and resources to manage all cottage lot developments and the sale or lease of land. They posed the question of whether or not the Department should concentrate on developing policies and identifying land to be developed but turn over day-to-day administration to another agency with the appropriate expertise.

A full examination of the pros and cons of both options is beyond the resources of this review.

Reinforce use of the Crown Lands Registry System

Unless there is a better alternative, registration with the Crown Lands Registry should be mandatory for all encumbrances, dispositions, and designations of Crown land. As noted in the Interim Report, the Lands Branch should investigate whether there is any advantage in collaborating with Land Titles to maintain the registry.

The Interim Report noted it is important that the public know which category land falls into and who has jurisdiction over specific land. The report further notes it is sometimes very difficult to find that information, even for government departments, because of the myriad of statutes applicable to Crown land. Sometimes the information is in the Crown Lands Registry and at other times in the files of Land Management Services. On reviewing this suggestion with senior officials, it was reported that the Assessment Branch maintains a record of the government departments responsible for various types of Crown land. It would be useful for those records to be linked with the information in the Crown Lands Registry.

A central registry would also facilitate co-ordination between mineral-rights leasing and Crown-lands leasing. It is theoretically possible for the Mines Branch to issue a surface lease in connection with mineral rights while at the same time the Lands Branch is

issuing a lease for the same property. Good communication prevents this from happening, but it would be better if this were prevented by a registration system.

Improve transparency of the Crown lands system

To ensure the public can understand the system and have confidence in its fairness, it is important for the system to be as transparent as possible.

I did not find the system of administering Crown lands across government to be transparent. Those working in the system understand it, but for someone without experience it is difficult to comprehend. There are numerous statutes that impact on the administration of Crown land and it is not easy to find which department and branch has jurisdiction over the land or how to lease or purchase land.

In contrast, the British Columbia and Ontario web sites have much more information about the process to acquire Crown land and the land available. The British Columbia web site outlines the steps in the sale of Crown land. In addition it shows who has applied to purchase and tracks the application.

At the very least, improved transparency should involve posting all land for sale and all policies on departmental web sites with links to the relevant statutes, regulations and contact persons. Agriculture has made good efforts in this respect.

Review consistency of cottage-lot pricing

Review pricing of cottage lot leases to ensure consistency between branches.

On the surface, there appears to be an inconsistency in cottage lot rental pricing between the Lands Branch and the Parks and Natural Areas Branch. The Lands branch charges four percent of current appraised value plus taxes. Parks and Natural Areas, on the other hand, charges four percent of the 1981 appraised value plus service fees. In some cases, the value of the land has increased significantly, meaning the rents charged by Lands Branch and Parks may not be consistent for properties of similar value.

Review the treatment of lodges

A review of the treatment of leasing and selling land for commercial lodges is necessary to ensure fair value and equal opportunity. This issue is likely to take on more importance as the competition for multiple uses of resources in the north intensifies.

The Interim Report (page 29) dealt with the issue of providing land and licences for lodges and outfitters. One body licenses them, but they must sometimes acquire land from another. The Conservation department is trying to integrate these processes.

There is, however, an internal departmental debate over how land should be made available. Most agree that, in an ideal world, land for a lodge would be identified and calls for proposals issued. This would allow all to participate. Some argue that this would not work, as it puts the government in the position of identifying suitable sites, which is not practical. Similarly, some argue that the Forestry Branch's practice of advising a potential purchaser that a public call for proposal would be required is unlikely to work because operators would not want to disclose their proposed sites.

This issue needs further examination in light of the practice of issuing exclusive licences. Although other land dispositions might occur on a lake, I understand that some lakes have been categorized as pristine lakes, which appears to give lodge operators some exclusive rights to the lake. This right can conflict with the public's ability to use other portions of land surrounding the lake and with Treaty Land Entitlement (TLE) selections. The department is currently discussing this issue at the directors level. Some argue that exclusivity is necessary because of the economic benefits generated. The origin of the exclusivity policy is unclear, as is the economic impact of job creation and tax revenue.

Questions that arise concerning lodges are:

- What representations concerning exclusivity have been made?
- Under what authority were they made?
- What lakes are covered? How many lakes? What size are the lakes?
- What are the economic benefits to the province from these lodges?
- What are the impacts of the exclusivity policy on the TLE process and the economic development prospects of northern First Nations?
- What would the impact be on the lodges of other uses on the lakes?
- Should the policy continue?

Minimize unadvertised transactions

Minimize land sold or leased without public offering, including when a potential purchaser or lessee approaches the government to secure land not on offer, for

commercial use. When this approach is not possible, officials must be aware of the need to demonstrate that they obtained fair value for the property through an equitable process.

Along the same lines as the licensing and making land available for lodges, the issue of unsolicited offers to purchase land is one that causes problems in all provinces. The preferred course of action is to decide which land will be offered for sale and then dispose of the land through a public process, whether it be advertising the land for a specific price, auctioning the land, holding a lottery or a combination of these.

When the government chooses available land before an offer has been made, the public policy issues of equal opportunity and fair value for citizens can be dealt with. On the other hand, when an unsolicited offer is made for land the government did not contemplate selling, issues of equal opportunity and fair value arise. While other provinces will continue to consider unsolicited applications for Crown land for property that will be developed to create employment and other economic activity, officials say that they will not consider such applications for individual residential or recreational property. In other words, property to be used for these purposes must be offered to the public at large. Although not formally stated, I am advised that this is now Manitoba's policy. It is a policy that ought to be continued unless there are compelling special reasons to deviate.

Conclusion

Over the years Manitoba has developed a very sophisticated system to deal with Crown land use, especially for handling conflicts arising out of competing uses. That system appears to have worked well. However as with other things, systems can age and are in need of renewal. The general thrust of this review is that such renewal can come from a revision of the Crown Lands Act and all of the steps that such a revision requires. It can also come not quite as broadly, but adequately, from improving the Crown land governance situation. Two steps suggested in this vein are the reconstitution of PLUC (or a similar body) and the designation of a senior official, with good policy development skills, to co-ordinate and champion the development of policy for Crown Lands in the Department of Conservation. These steps will result in a timely and appropriate policy-development process to deal with some of the policy issues facing Crown Lands

Crown Lands Review

Interim Report

November 15, 2002

Ron Perozzo

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A. Introduction

This is the Interim Report required by the terms of reference for the Crown Lands Review. While the complete terms of reference for this review are set out in Appendix A it is worth noting a few points from the background section of the terms of reference to provide some context for the review. The material notes that

> "Despite the presence of fairly comprehensive policy frameworks such as the CLCR, there have been several instances where full consideration has not been given to more recent government sustainable development policies including policies in water, wildlife, forestry and protected areas. It has also become apparent that updated policies and procedures are needed to ensure that the Province is receiving full value for the disposition of Crown land and other property. Finally, it appears that the CLCR process is not fully transparent to the public nor are full descriptions of individual sales and leases clearly laid out for Cabinet."

The material then points out the steps that the department has taken to address these concerns but also states that in addition, the government "has determined that it is in the public interest to have a third party review of the internal reviews of Crown Lands policy as well as existing practices and procedures."

The Auditor General has also been investigating two series of land transactions conducted by the Parks and Natural Areas Branch. These transactions concern the resettlement of Hecla Island by former residents or families of former residents and the sale and leasing of certain personal and real property on Hecla Island at the Hecla Island Marina. Given the work of the Auditor General this review will not look at either of those transactions in detail. The review will take a broader approach, concerning itself with the administration of Crown land in the government as a whole. It is hoped that the two reports, one more detailed and the other covering a wider area will provide a good picture of government operations concerning land.

The essential elements of the terms of reference require me to

- provide recommendations that will assist the government in applying due diligence to transactions concerning the sale, lease or other disposal of real property or fixtures owned by the province of Manitoba in a way that best protects the interests of the Manitoba public and the principles of sustainable development

- review existing policies and procedures (and the legal framework for such policies and procedures), conduct interviews and, if necessary, review any files or

correspondence deemed necessary to assess the application of existing policies and procedures

- review policies and procedures in other jurisdictions for comparative purposes
- prepare and provide a separate report which will comment on, endorse, reject or add to the recommendations provided by the internal review committee and provide other recommendations as required
- provide an interim report to the Minister of Finance no later than November 15, 2002 and a final report no later than January 1, 2003

In preparing this interim report I interviewed a number of government officials and reviewed statutes, regulations and policies. The names of the people I interviewed are set out in Appendix B. The statues, regulations and policies are referenced throughout the report.

Managing Crown lands is about managing tensions. Tensions over land use, such as maximizing land used for agriculture versus preserving wildlife habitat, preserving wilderness for use as parks versus harvesting forests and developing cottage lots versus preserving pristine lakes. The list could go on. There are also administrative tensions that arise as officials charged with administering certain acts deal with officials administering other acts that support a different use. Superimposed on these tensions are constitutional and other obligations to Aboriginal people. It is a complex issue, and to deal with it, a complex set of statutes and administrative arrangements has grown up over time.

In this interim report I attempt to describe the major components of the issue, first describing the statutory regime, next the players and administrative arrangements created to manage Crown lands. I then identify issues and provide some preliminary comments.

(Note: I have circulated sections B, C, and D of this report to some of the people interviewed with a request to review it for accuracy. Some of the information below may change slightly in the final report.)

B. The Statutory Regime

The western provinces obtained jurisdiction over the natural resources, including publicly-owned land within their borders, through the Natural Resources Transfer Act 1930. Through this act the federal government transferred ownership and jurisdiction over natural resources, including Crown land, to the provinces. (As an aside, I note that the Natural Resource Transfer Act is not without its own issues. Aboriginal groups have challenged the legitimacy of this transfer. Seven First Nations in Alberta have sued the federal and Alberta provincial government alleging that the Natural Resources Transfer Agreement of 1930 breached a fiduciary duty the federal government owed to the First Nations and that the transfer was made without consent.)

The primary statute governing Crown land in Manitoba is the *Crown Lands Act*. The first Crown Lands Act (then called "*An Act Respecting the Sale and Management of Provincial Lands*") was passed in 1887. It became the *Crown Lands Act* in 1934.

B.1 The Crown Lands Act C.C.S.M. c. C340

The *Crown Lands Act* defines Crown Lands as including any land the province owns. It establishes the Lands Branch under the control of the Minister of Conservation and through which the minister manages and administers Crown lands. The Act, however, also establishes a category of Crown lands known as agricultural Crown lands. Order in Council 419/2002 assigns responsibility for the sections of the Act dealing with non-agricultural Crown lands to the Minister of Conservation and those sections dealing with agricultural Crown lands to the Minister of Agriculture and Food. The effect is to establish two types of Crown lands and two branches to deal with Crown lands: the Crown Lands Branch of the Department of Conservation and the Agricultural Crown Lands Branch of the Department of Agriculture and Food.

Certain powers in the Act are reserved for the Lieutenant Governor in Council (L. G. in C.) while others are delegated to the ministers. The more important powers given to the L. G. in C. are the right to

- determine price and terms and conditions of sale and payment
- lease Crown land, **other than Agricultural Crown land**, for more than 21 years and determine the conditions of the lease and rent payable
- set aside land out of unoccupied Crown land to enable Canada to meet treaty obligations
- set aside Crown lands for provincial parks, provincial forests, wildlife management areas, wildlife reserves and public purposes

The more important powers given to the Minister of Conservation are the right to

- control, manage and dispose of Crown lands
- lease Crown lands, **other than Agricultural Crown Land,** for up to 21 years
- issue work permits authorizing specific work on Crown land
- issue permits for the occupation of Crown land, **other than Agricultural Crown land**, from year to year
- issue licences for the occupation or use of Crown lands for specified purposes
- issue any easement or right-of-way, over or under Crown Lands.

Agricultural Crown lands are dealt with in a special part of the Act. The power to designate and sell agricultural Crown lands rests with the Minister of Conservation. The power to lease agricultural Crown lands rests with the Minister of Agriculture and Food. The director of Agricultural Crown Lands Branch has the power, subject to the Act and regulations, to

- lease agricultural Crown lands
- issue work and use permits for agricultural Crown lands
- approve transfers of such leases and permits
- cancel leases and permits

The Act stipulates that rent or fees for the use of agricultural Crown land shall be set by regulation or determined by public tender.

The L. G. in C. is authorized to establish an appeal board to deal with appeals of the director's decision concerning any of the above including the awarding or refusal of a lease, or permit, or transfer or cancellation of a lease or permit.

In summary, the Act allows the Minister of Conservation to sell any Crown land subject to approval of price by the L .G. in C. and lease non-agricultural Crown land for up to 21 years. The L. G. in C. must set the price or limits on the price of Crown land, approve the terms and conditions of sale, and may lease non-agricultural Crown land for more than 21 years. The director of Agricultural Crown Lands may lease agricultural Crown land subject to any restrictions in the Act. The regulations currently limit such leases to 50 years.

A number of other Acts effectively remove or limit the effects of the Crown Lands Act. They are outlined below.

B.2 The Provincial Parks Act, C.C.S.M. c. P20

Under the *Provincial Parks Act* the L .G. in C., may, by regulation, designate land as provincial parks. At this point that land becomes the administrative responsibility of the Parks and Natural Areas Branch. Once designated as a provincial park, Crown land cannot be sold unless the park designation is removed, although parkland may be rented. The use of land within a provincial park is dependent upon how the land is classified by regulation. The categories are

- wilderness
- backcountry
- resource management
- recreational development
- heritage

- access
- or other category

Logging, mining, the development of oil, petroleum, natural gas or hydro-electric power or any other use specified by regulation is prohibited in a wilderness park or wilderness, backcountry or heritage designated land use area of a park. These activities may be permitted in other parks or park areas, after obtaining appropriate approvals.

The L .G. in C. may also designate Crown lands as a park reserve for up to six months initially and for a further five years after that to allow for public consultation. At the time of the designation, any of the provisions of the Act may be applied to the designated land.

The important aspects of the *Provincial Parks Act* for the purpose of this review are that

- administration of the land is moved to the Parks and Natural Areas Branch
- the Parks and Natural Areas Branch may lease or issue permits in provincial parks, including ones for cottages and some commercial development
- lessees and those holding permits may be charged rent and service fees

B.3 The Forest Act, C.C.S.M. c. F150

The *Forest Act* gives the minister responsible for the Act the authority to regulate forestry on Crown land. Provincial forests are lands designated as such by regulation. All Crown lands within a provincial forest are withdrawn from disposition, sale, settlement or occupancy except under the authority of the *Forest Act*. All Crown land within a provincial forest is under the control and management of the Director of Forestry, subject to direction from the minister. Land designated as provincial park within a provincial forest is not withdrawn from the provincial forest.

Other uncultivated Crown land with trees or shrubs or any barren, dry marsh or bog is Crown forestland. The minister has authority, in addition to the authority over provincial forests, over the management, use and conservation of Crown forestland and timber.

The Act also establishes the Forestry Branch. This branch administers the grazing of livestock, cutting of hay, gathering of wild flora or occupancy of land in provincial forests. Regulations allow the Branch to issue permits and leases in provincial forests for a variety of land use and occupancy including summer cottages, campgrounds, hunting, trapping, and fishing cabins.

The Act requires that, if Crown land with valuable timber is to be sold, the value of the timber must be added to the sale price. If application is made to lease wooded land and the minister is of the opinion that the land is best suited to forest production, the minister may refuse the application, adjust the leased area or make other arrangements.

The Act allows the minister to offer forest management licences, timber sales and permits in ways that will secure the maximum benefit to the forest industry and sets out four non-exclusive possibilities for offering licences, sales and permits.

- public competition
- with approval of the L .G. in C. in certain circumstances
- by permit or sale where the Minister believes competition is impracticable
- by permit for personal use subject to conditions prescribed by regulation

Employees of the department are prohibited from holding an interest in timber berths or timber licences issued by the department, and they cannot be involved in any business dealing with timber or forest products.

B.4 The Wildlife Act, C.C.S.M. c. W130

Under the *Wildlife Act*, the L. G. in C. may designate areas of Crown lands as

- wildlife management areas, refuges, special conservation areas
- registered trap line districts
- special trapping areas
- any other type of area that the L. G. in C. may specify

The effect of such a designation does not limit or affect land uses and activities that may be undertaken unless the Act or regulations specify otherwise. The minister is authorized to make regulations

- respecting the use, control and management of an area
- authorizing, regulating or prohibiting any use, activity or thing in an area
- authorizing the construction, operation and maintenance of any building structure or thing in a wildlife management area (WMA)

The Branch issues a limited number of WMA use permits for non-intensive, short-term use such as research, recreational trails (TransCanada Trail) etc.

Regulation 171/2001 designates a number of wildlife refuges, goose refuges, fur bearing animal refuges, wildlife management areas, special conservation areas, and animal control areas. Regulation 77/99 as amended by Regulation 52/2000 sets out prohibitions for the areas. Generally, in a wildlife management area the following are prohibited:

- grading, gravelling or clearing a road or trail
- installing or modifying a stream crossing

- draining dyking or blocking a manmade or natural waterway or wetland
- haying, grazing, clearing, bulldozing, burning, fencing, logging, cultivating or mineral exploration or extraction
- applying pesticides
- constructing, placing or occupying or using a building, structure or tent unless it is a portable structure or tent that is removed when the person leaves the area.

The regulation goes on to specify other prohibitions for specified wildlife management areas. In general, items prohibited are

- hydro-electric exploration or development
- logging or commercial forest harvesting
- mineral exploration or extraction
- any other activity that significantly and adversely affects habitat

B.5 The Mines and Minerals Act, C.C.S.M. c. M162

The *Mines and Minerals Act* is the primary legislation governing minerals and mining in Manitoba. The object of the Act is "to provide for, encourage, promote and facilitate exploration, development and production of minerals and mineral product in Manitoba, consistent with the principles of sustainable development". This report concerns itself only with minerals on or under Crown lands. The *Crown Lands Act* reserves the ownership of these minerals for the Crown. It also reserves the right to enter, prospect, mine and remove the minerals even if the land is leased or sold, unless the sale or lease agreement explicitly provides otherwise.

The Act establishes the Mines Branch and under the supervision of the minister gives the Branch the authority to deal with the Crown's mineral interest in Crown lands. In general the right to explore and remove minerals may be granted for any Crown land, whether under lease or not, unless another statute such as the *Provincial Parks Act*, the *Wildlife Act*, the *Forest Act*, the *Water Power Act*, the *Ecological Reserves Act* or the *Crown Lands Act* provides otherwise. Along with the right to explore and remove minerals comes the right to enter the surface of the land to do so. With respect to Crown lands that right is subject to obtaining appropriate approvals for land that is

- reserved within the boundaries of a provincial forest under the *Forest Act*
- within a provincial park
- within a Wildlife Management Area under the *Wildlife Act*
- set aside for a public purpose under the *Crown Lands Act*

For other Crown land, including agricultural Crown land, the Minister responsible for the Mines Act may grant a surface lease giving the holder of the right the exclusive use of the surface, subject to any conditions the minister may impose. This right to grant the surface lease runs parallel to the right of the minister responsible for Crown lands to grant a surface lease. Crown lands under valid mineral lease, quarry lease or surface lease are not available for sale or long-term surface lease such as cottage lot subdivision, which would restrict mineral exploration and development. Crown Lands Branch circulates all land applications to the Mines Branch. The Mines Branch may withdraw the parcel from a mining lease to allow disposition, depending on the type of disposition and the impact on the mineral lessee.

Fees rentals and royalties for the minerals are set by regulation.

B.6 The Oil and Gas Act, C.C.S.M. c. O34

Under the *Oil and Gas Act* the Petroleum Branch can grant an exploration reservation or lease to explore for oil and gas under Crown land. These rights carry with them a right of access to the oil and gas, but the holder must obtain a right of entry to the land either by agreement with the owner or pursuant to the *Surface Rights Act*. On Crown land, the right of entry would be obtained from the Crown Lands Branch. If the land is leased, the Crown Lands Branch would deal with the lessee. To facilitate the process, the Crown Lands Branch or the Agricultural Crown Lands Branch may suggest that the oil and gas exploration reservation holder or leaseholder deal directly with the lessee of the land. At this time, the exploration reservations and leases for oil gas are not being registered in the Crown Lands Registry. The Petroleum Branch, however, has recently contacted the Crown Lands Branch about recording of its leases on the Crown Land Registry.

B.7 The Water Power Act, C.C.S.M. c. W60

The *Water Power Act* deals with the province's right to water and water power, including the production of energy from water power. In connection with Crown lands, it stipulates that Crown lands

- upon which there is water power
- required for the protection of any water power
- required for the purposes of any undertaking

are not open to sale except in accordance with the Water Power Act.

Where the minister determines that Crown lands

- upon which there is water power
- that were required for the protection of any water power
- that were required for the purposes of any undertaking

- that were withdrawn from disposal under any Act for use under this Act

are no longer required, the Minister may direct that the lands be dealt with under the *Crown Lands Act*.

B.8 The Water Resources Administration Act, C.C.S.M. c. W70

The *Water Resources Administration Act* deals with the overall administration of water control works and various acts related to water. With respect to land, the Act authorizes the Minister, subject to *The Land Acquisition Act*, to acquire land for water control works.

The minister, notwithstanding the *Crown Lands Act*, may dispose of land acquired under the above authority with the approval of the L. G. in C., if it is valued at more than $500 and without approval if it is valued at less than $500. With the same approval, the minister may lease land with an annual rental value of $500 or more and without approval lease land with an annual rental value of less than $500.

The minister may also direct that land be dealt with under the *Crown Lands Act*, if the land is no longer required for water control works. The Act also allows the minister a further option of dealing with Crown land on abandoned or closed water control works. The L. G. in C. may order land sold, leased, conveyed to, or vested in, any other person or otherwise disposed of as may be directed in the order.

B.9 The Resource Tourism Operators Act, C.C.S.M. c. R119.5

The *Resource Tourism Operators Act* (passed in 2002 but not yet proclaimed) deals with the licensing of outfitters, outfitting services and related facilities. The Act is important for our purposes because those licensed will sometimes also require some disposition of Crown land to carry on their business. The Act establishes an Administrator of Resource Tourism to administer the Act, an advisory committee and an appeal committee. Anyone carrying on the business of an outfitter requires a licence unless the business takes place entirely on private land and service is provided in connection with ecotourism activities. No facilities may be constructed or expanded or used for outfitting without a permit.

The advisory committee has not been established, but under the current act it is composed of representatives from the departments of Conservation, Aboriginal and Northern Affairs, and Culture and Tourism. The appeal committee will be composed of people independent of government with at least one person representing each of the following groups: outfitters' associations, hunting or fishing associations, and members of the public who have experience in the outfitting industry or who hunt, fish or participate in ecotourism.

B.10 The Ecological Reserves Act, C.C.S.M. c. E5

Under the *Ecological Reserves Act*, the L. G. in C. may designate Crown land in the province as an ecological reserve. Such land is to be set aside in the interests of the people of Manitoba to enhance the overall well-being of present and future generations. Ecological reserve land cannot be sold or transferred unless the designation is removed. Removal requires advertising and, if the minister considers it in the public interest, public input.

The minister responsible for the Act may make regulations respecting the management of reserves. The regulations may

- regulate or control use of the reserves
- deal with the issuance, suspension and cancellation of licences and permits to enter or engage in activities in the reserves
- deal with any matter necessary to carry out the intent of the Act

The Minister may appoint an Ecological Reserves Advisory Committee to provide advice on the Act and the establishment of reserves.

B.11 The Land Acquisition Act, C.C.S.M. c.40

The ***Land Acquisition Act***, subject to other specific statutory authorities, governs the Manitoba government's purchase or expropriation of land. Land Management Services, formerly the Land Acquisition Branch, administers the Act. Land Management Services is a special operating agency and as such charges other government departments and agencies for its services. It purchases, expropriates and handles all administration connected with purchases or expropriation of land for authorities. It also offers an appraisal and short-term land management service. The Act appears to make Land Management Services the exclusive body to acquire land for the government. Section 6(1) states

> Where an authority requires any land, the land shall be acquired through the branch as provided in this Act; and, notwithstanding the provisions of any Act of the Legislature under which the authority is so authorized, the minister shall acquire land through the branch.

The Act also establishes the Land Value Appraisal Commission. The Commission certifies compensation when Land Management Services purchases or expropriates land for an authority. The owner of land is not bound by the certification, but the government is bound by the certification when it is purchasing land. The certification may be varied by presentation of new evidence.

The Act also empowers Land Management Services to dispose of buildings or improvements on the land, if the authority for which the lands are being acquired certifies that the buildings or improvements are not required.

Where excess land has been acquired and possession has not been transferred to an authority and the authority does not require the land, the director may order the land transferred to be administered under the *Crown Lands Act*.

Under certain acts of the Legislature such as *The Northern Affairs Act* and the *Crown Lands Act*, land can be made available for sale but it must be sold under the *Crown Lands Act*. In other cases the General Manual of Administration applies. Section PG-20-03 of the manual states, in part

> "An Authority having legislative authority to acquire land and dispose of land, including improvements, may exercise its option to handle the disposition itself or request the Branch (LMS) to effect disposal. All other disposals shall be handled by the Branch in accordance with the Land Acquisition or Public Works Act."

The procedures Land Management Services uses to sell land are dealt with below.

B.12 The Public Works Act, C.C.S.M. c. P30

The *Public Works Act* gives administration of public works to the minister responsible for the Act, unless another specific act provides otherwise. Public work is very broadly defined to include virtually any improvement to land other than a highway or road or work or object on or adjacent to a highway or road. In other words, the minister has administrative authority over all government buildings and other improvements, except highways, and any improvements dealt with in another act. The minister can acquire land or personal property required for a public work.

The minister can also dispose of real or personal property. Section 3(2) of the Act provides that notwithstanding the *Crown Lands Act*, the minister may

- with approval of L. G. in C. sell or exchange or otherwise dispose of real or personal property
- with like approval, lease any property where the annual rental value is less than $25,000
- without approval, lease property where the annual rental value is less than $25,000
- Without approval, lease personal property

Approval of the L. G. in C. is not required for sale if the minister believes real or personal property has a value of less than $25,000.

Where the minister decides land acquired for, or used in connection with, a public work is no longer required, the minister may transfer the land to be dealt with under the *Crown*

Lands Act as long as the land is agricultural land and is not within a city, town, or village and does not include residential, commercial or industrial buildings.

Surplus land containing residential, commercial or industrial buildings or lands within a city, town or village that is not agricultural land, that is under the control of another minister, may be transferred to the Minister of Public Works to be dealt with under the *Public Works Act*.

B.13 The Highways and Transportation Act, C.C.S.M. c. H40

The *Highways and Transportation Act* gives the administration of highways and roads to the minister responsible for the Act. The Act contains provisions similar to the *Public Works Act* dealing with the disposal of surplus property. The minister may sell, with L. G. in C. approval, and lease with like approval where the annual rental value is greater than $25,000. The minister may lease without approval if rental value is less than $25,000. Real or personal property valued less than $25,000 may be sold without L. G. in C. approval.

The minister may turn surplus land acquired or used in connection with a road or drain over to the minister responsible for the *Crown Lands Act* to be dealt with under that Act.

B.14 The Northern Affairs Act, C.C.S.M. c. N100

The *Northern Affairs Act* prohibits the disposition of Crown land in northern Manitoba without the approval of the Minister. Where Crown land is located in a community, an incorporated community, or within eight kilometres from the boundaries of any of them, before approving the disposition, the minister must consult the community council, the local committee, or the incorporated community council, about the disposition, unless the disposition is the renewal of a permit for occupational use.

B.15 The Treaty Land Entitlement Framework Agreement

On May 29, 1997, the Province entered into an agreement with the Treaty Land Entitlement Committee of Manitoba Inc. and the Government of Canada to settle historic obligations, which the federal government had to certain First Nations in Manitoba. Manitoba became a party to these obligations under the Manitoba Natural Resources Transfer Agreement. In summary, the governments were required to provide a certain quantity of land to these First Nations. The actual amount was not agreed upon until the Treaty Land Entitlement Framework Agreement (TLE Framework) was signed. It is important for our purposes to note that the TLE Framework, subject to a number of conditions, gives certain First Nations a right to select unoccupied Crown land in accordance with the principles of land selection in the agreement. This obligation is something that must be remembered when setting policy dealing with Crown lands.

B.16 The Northern Flood Agreement

Signed on December 16, 1977, The Northern Flood Agreement is an agreement between Manitoba, Manitoba Hydro, the Government of Canada and Five First Nations in northern Manitoba that deals with claims of the signatory First Nations arising out of Hydro Electric development projects in northern Manitoba. Again, for our purposes, the important aspect of this agreement is that these five First Nations were given certain rights to priority selection of unoccupied Crown lands as compensation for lands damaged by the Hydro Electric development. Four of the five First Nations have completed their selections. This is another obligation that must be kept in mind when setting Crown land policy.

C. Administrative Regime

This section describes the branches involved in the disposition of Crown land and their major activities. The activities of the Crown Lands Classification Committee, an interdepartmental coordinating body, are also discussed.

C.1 The Lands Branch

The Lands Branch consists of Crown Lands Operations, Treaty Land Entitlement, and Crown Lands Registry sections:

> Crown Land Operations administers Crown land and wild rice programs. It works with all branches of Manitoba Conservation as well as several other departments and agencies, the primary ones being Agriculture and Food, Aboriginal and Northern Affairs, Intergovernmental Affairs, Highways branch, Mines branch, Survey Services, Manitoba Hydro and rural municipalities. Its main link to regional operations is through the regional land managers who review Crown land applications, policies and programs through the regional integrated resource management teams.
>
> The section is responsible for a broad spectrum of complex processes related to sales, exchanges, leases, licences of occupation, permits, easements and reservations. In 2001/2002, it issued 106 new permits and renewed 2,626, completed 179 sales and had 103 sales in progress. The branch renewed 139 vacation home leases issued 5 new leases and renewed 389 vacation home permits.
>
> The Treaty Land Entitlement unit administers the transfer of land to Canada to fulfil obligations under the Treaty Land Entitlement Framework Agreement.
>
> The Crown Lands Registry section maintains a computerized Crown land registry of current and historic disposition of Crown land and related transactions. The registry provides valuable information to the public and government officials on the status of Crown land and any encumbrances on the land. Land registered in

the Land Titles Office may show only that the province owns the land. It may not show that the land has been designated under one of the statutes noted above, which department has jurisdiction over the land, or if the land has been disposed of or encumbered. The section also maintains a records vault containing paper and microfilmed archives of all dispositions and related documents.

A new Crown land registry system went live in early November. The new system provides enhanced management, querying capabilities and expanded access throughout government. In addition to containing all information related to Crown land dispositions made by the Lands Branch, the system also includes dispositions made by Parks, Agricultural Crown Lands, Mines, and Highways. The section is currently in the process of integrating with the Licence Advisory Committee database of lodges, outcamps and outfitters, as well as the Water, Forestry, Wildlife and Petroleum branches.

In addition to integrating the data from these branches onto the registry, Lands branch is in the process of integrating their application review processes and will provide ongoing maintenance, reporting and invoicing services to these branches, (other than Petroleum).

The Lands Branch is responsible for the administration of all Crown lands other than those removed from its jurisdiction by other acts, most of which have been noted above. (For example, leasing of agricultural crown land, parks, wildlife management areas, provincial forests, etc.). The branch issues permits, licences, leases for up to 21 years, and, with approval of the L. G. in C., sells land and leases land for longer than 21 years. It also administers some municipal land by agreement with municipalities.

To date, land has been generally available for sale, lease, license or permit. Being generally available means that if an eligible applicant applies and there are no objections after circulation to government departments and agencies, the land will be sold or leased or a permit will be issued. Approval may be subject to administrative issues such as the requirement for subdivision approval, survey, caveats etc. All of these forms of disposition may be assigned or transferred with the approval of the Minister. Fees for all dispositions other than sales are set by regulation.

C.1.1 Types of Disposition

The following are the types of dispositions available and their major characteristics and usage:

Permits are issued for one year and are renewed annually upon payment of the annual rent. A survey is not required. Common applications are for cottages, residences, winter roads, commercial fishing or trappers cabins, lodges and outcamps, communication towers, sign sites etc.

Licences of occupation give a licensee a limited interest in land for a non-exclusive use such as harvesting reeds. It is a form that has not been used much in the past. The department is proposing to make greater use of licences where there is no long-term development but the land may be required for a longer time. An example of proposed use would be for the TransCanada Trail. A survey is not required.

Exchanges. Crown land is sometimes exchanged for private land of equal value. The majority of exchanges have been with rural municipalities.

Easements are granted for Hydro, MTS and gas or oil transmission lines.

Leases are generally for a term of 21 years with an option to renew with consent for further 21 years. Consent is rarely withheld. Leases may be granted on non-agricultural Crown land for a longer period with Cabinet approval. A survey is required for a lease, except where the Director of Surveys authorizes a lease based on a legal description only. Leases are used when a more secure form of tenure is desired and a greater investment made on the site. Leases are generally used for cottages, residences, commercial uses and mine sites.

The department is proposing to move away from permits where significant permanent development is proposed and to use permits for short term less-intensive uses. The proposal is based on a recommendation from Intergovernmental Affairs that subdivision approval should be required where permanent development is proposed, albeit subdivision approval is required under the *Planning Act* only when land is proposed to be sold. Since subdivision approval requires a legal survey, this would then allow for the issuance of leases where significant permanent development is proposed for a site. The department says that a specific policy and guidelines are to be developed to set out the circumstances under which subdivision approval and leasing are appropriate. These guidelines will give reasonable consideration to types of proposed structures, development, location of adjacent developments, and future planning issues that may result from the lack of initial subdivision approval survey.

Licences of occupation are proposed for specific use where no development is authorized other than portable structures. Tenures may be overlapped for non-competing or non-conflicting uses. A maximum term of ten years is proposed with no survey required.

Crown land is also sold. Generally, if an eligible applicant proposes a permitted use and there are no objections, the land will be sold. Most common applications for Crown land are for

- agricultural leased land (by the lessee)
- lots in a recreational subdivision
- residential and recreational lots in Northern communities
- commercial land use

Applications to purchase land must be for a specific use, compatible with any existing disposition and are not accepted for areas set aside by Order in Council such as provincial forests, parks, wildlife management areas, etc. without the consent of the administering branch. The department determines the amount of land required and may require a survey and subdivision approval. Conditions may attach to the sale and may be registered as a caveat against the title. Local by-laws and development plans apply.

Cottage lots in newly created subdivisions are allocated on an initial lottery basis with leftover lots offered on a first-come-first-served basis. An initial fee to cover the cost of development is charged, followed by an annual rent. Annual rent is set at 4% of appraised or assessed value, subject to minimums, under the Crown lands fee regulation.

The branch also administers land held by Manitoba in trust for some rural municipalities (previously called local government districts) that acquired land through tax sales. The local government districts were unable to manage these lands and entered into an agreement with the provincial government to manage the lands on the understanding that they would be returned to the local government districts on request. In 1977, a policy was approved whereby the province committed to transfer these lands directly to a purchaser upon receipt of a municipal council resolution directing the sale and price.

Specific sale procedures are more fully discussed later.

C.2 Agricultural Crown Lands Branch

The Agricultural Crown Lands Branch of Manitoba Agriculture and Food deals with the leasing of agricultural Crown lands. The designation of agricultural Crown lands is dealt with by the Crown Lands Classification Committee, which is described below. The branch issues cropping and forage leases as well as forage permits. Approximately 1.6 million acres are under forage lease and the branch has in excess of 2300 leases. Total revenue from leases in 2001/2002 was approximately $1.3 million. To be eligible for a lease, an applicant must be 18 years of age, a Canadian citizen or landed immigrant, and be a resident of Manitoba actively involved in the management of a farm or ranch. There are also appropriate rules for corporations.

C.2.1 Types of dispositions

The Agricultural Crown Lands Branch issues three main types of arrangements:

> Cropping leases are issued, after tender, for terms of five years. An amount equal to annual municipal taxes is payable in addition to rent. The holder of an existing lease has the opportunity to meet and exceed the highest bid when the lease is re-tendered at the end of the five-year term.
>
> Forage leases are issued for a term equal to the difference between the lessee's age and 65. By regulation no lease may be issued for a term longer than 50 years. Rent is established by a formula based on surveys of the market rent for similar leases. Lessees are responsible for water, fencing and taxes. Land is advertised and a scoring system is used to determine the successful applicant.

Hay or grazing permits may also be issued for one-year terms.

To ensure leasing of any land is appropriate, all vacant Crown lands coded for agricultural use must be advertised as being available for lease. Prior to advertising, the list of lands being considered for leasing is circulated for comment to the Lands Manager of Department of Conservation, the Bloc Planning Committees (BPC) and the CLCC. At this point, Crown lands may be identified to be withdrawn from advertising and leasing, pending further review by the BPC/CLCC.

Lessees in good standing are able to apply to purchase Crown land that they lease after two years. The sale procedures are discussed later.

C.2.2 The Manitoba Agriculture and Food Crown Lands Appeal Board

The department has established an independent board, the Manitoba Agriculture and Food Crown Lands Appeal Board, to deal with appeals of a

- refusal to grant a lease or permit
- refusal to approve the transfer of a lease or permit
- refusal to grant a work permit
- cancellation of a lease, use permit or work permit for non compliance

C.3 The Parks and Natural Areas Branch

The Parks Branch or regional parks administration deals with the disposition of park lands. Because parks cannot be sold, disposition consists of permits and commercial and cottage leases. The Parks and Natural Areas Branch deals with commercial leases for providing services in parks.

Cottage lots in newly created subdivisions are allocated on an initial lottery basis with leftover lots offered on a first-come-first-served basis. An initial fee to cover the cost of development is charged followed by an annual rent and service fee. In the recently developed cottage subdivision at Hecla/Grindstone Park, the initial fee was $20,000. The annual rental fee for all cottage lots is set at 4% of 1981 appraised value. Rent for commercial-use lots is set at 3.8% of appraised value. The service fee is dependent on the services offered and the cost of service. Leases are offered for 21 years with a renewal for a further 21 years with consent.

C.4 The Forestry Branch

The Forestry Branch sells timber and issues forest management licences, and permits. Timber cutting rights, including forest management licences, timber sales and timber permits are offered by tender, unless dealt with by L. G. in C. The tender process is by-passed when a competition is impracticable or the amount to be sold is a small quantity or for the applicant's personal use.

As noted above, the branch also issues a variety of land-use and occupancy permits and leases.

C.5 The Mines Branch

The Director of the Mines Branch is responsible for the overall supervision of mines in the province. For purposes of this review, it is important to note that in issuing rights to surface and subsurface minerals, it is crucial that the Branch know the status of Crown lands and the mineral rights. The Director also has the power to issue surface leases on Crown lands for a term not to exceed the term of the mineral lease. Prior to 1975, the Mines department granted surface leases. From 1975 to 1992, the Crown lands branch issued them. Since 1992, the Mines branch has issued surface leases. The rent charged for the surface lease is minimal since the branch believes that the surface leaseholder is already paying the rental for the mineral lease or quarry lease. Mines branch leases are registered in the Crown Lands Registry.

C.6 Land Management Services

As noted above, Land Management Services (LMS) has a role in the administration of land. It is charged under the *Land Acquisition Act* with the responsibility to acquire land for client departments. As a special operating agency, it also provides appraisal services and disposes of surplus land and improvements when a department does not have the option by statute of disposing of its own property. LMS procedures on sale are dealt with below.

LMS currently manage 63 property leases, including both agricultural and commercial properties, on behalf of Manitoba Transportation, Manitoba Government Services and Conservation (Water Branch). Leases managed by LMS are developed to benefit the authority that has administration and control over the land being leased. The 2001/02 rental income collected on behalf of the province was $92,000, with tenants also paying associated property taxes directly to the municipal authority. Leases typically are 5-year terms with an estimated 75% of the leases being to adjacent landowners. For those properties that have limited value to other people, adjacent landowners are given first right to lease. The remaining properties are either commercial sites or agricultural parcels and are sufficient in size to advertise for tenders or bids by the general public.

Annual rental payments are based on investigations of current rental conditions of property of similar classification within the immediate area, by a qualified property appraiser. LMS fees for service, including disbursements, are recovered against rent collected.

C.7 Licence Advisory Committee

The licensing of lodges and outfitters is in transition. Currently, *The Tourism and Recreation Act* governs licensing, but the new *Resource Tourism Operators Act* will take over after its proclamation. For purposes of this review it is important to note that the

licence granted to operate a lodge or as an outfitter does not grant an automatic right to Crown land. Both processes must be coordinated.

By policy or practice, past licences have purported to be exclusive in the case of an angling operation on a smaller remote lake, in that another licence for a similar business will not be issued for the same lake, although other land use dispositions are possible. The exclusivity issue has arisen as a result of Treaty Land Entitlement selections on some lakes with lodges. The argument is made that the conversion of TLE-selected land to First Nation Reserve could deprive the angling operation of sole use of the lake, if the First Nation chooses to establish a competing operation.

C.8 The Crown Lands Classification Committee

The Crown Lands Classification Committee (CLCC) was established by a memo, dated December 23, 1975, from the Minister of Renewable Resources and Transportation Services and the Minister of Agriculture, to the Premier. The Premier counter-signed the memo on December 31, 1975. The memo indicates that the committee resulted from a meeting dealing with the "problems relating to agriculture versus wildlife and forestry requirements for Crown land." The meeting was "directed toward making Crown land more readily available for agricultural development and leasing, particularly in the parkland area." The memo noted that there was a desire to make more land available for forage and that the competing demands of wildlife and forestry could be an issue. The committee was the government's response to resolve these conflicting demands.

The CLCC is an interdepartmental committee with representation from

- Conservation, (Wildlife, Forestry, Lands, Fisheries, Parks and natural Areas, Environmental Approvals, Regional Operations and Sustainable Resource Management
- Agriculture and Food (Agricultural Crown Lands, Soils and Crops)
- Industry Trade and Mines (Mines)
- Aboriginal and Northern Affairs
- Intergovernmental Affairs

Since 1978 the CLCC, operated under the direction of the Provincial Land Use Committee of Cabinet (PLUC), which has not been reconstituted under the current government. As a result, the CLCC currently operates under the direction of Cabinet.

Current members of CLCC are program directors, managers or analysts. The CLCC's main area of jurisdiction is Agro-Manitoba. Agro-Manitoba is defined as including, in general, "all organized rural municipalities (RMs) and local government districts (LGDs) south of township 47 and the fringe unorganized area adjacent to these RMs and LGDs. In addition, the RM of Kelsey and a fringe area surrounding this RM are also considered Agro-Manitoba." The CLCC policy manual states that it is "responsible for all Crown

land use classification and planning in Agro-Manitoba" and "for classifying to use Crown lands which may have agricultural capability in the remaining area of Manitoba on a site specific basis." ("Classifying to use" means the classification is based on assignment to one or more use categories).

While the CLCC has certain other duties, the important responsibilities for the purposes of this review are its current work in coding or approving the uses of land and its role in the sale of land under agricultural lease.

As noted under the discussion of the *Crown Lands Act*, Section 7.2(1) authorizes the Minister of Conservation to designate Crown Lands as agricultural Crown lands. Such land then becomes available for lease by the Agricultural Crown Lands Branch. It is my understanding that, in practice, there is not a formal designation by the Minister of Conservation. Crown land becomes agricultural Crown land when the CLCC codes it for that use. The CLCC has a sophisticated coding system that allows for multiple uses.

In determining how to code or in essence what land usage to approve, the CLCC is aided by six Bloc Planning Committees (BPC) which were established in 1976. The BPCs are composed of regional specialists from departments on the CLCC. They provide recommendations on the use classification of Crown lands, proposed sale or exchange of agricultural Crown lands, and the possible designation of Crown lands for provincial forests, wildlife management areas, provincial parks, community pastures and ecological reserves.

In summary, the authorized use of Crown land in southern Manitoba starts at the local level with BPC input and is finalized by the Crown Land Classification Committee

There are two components to the CLCC planning program: provincial Crown land plans and operational Crown land plans:

> Provincial plans describe provincial land use intent. Provincial Crown land plans are eventually approved by Cabinet. To date 19 provincial Crown land plans have been approved and 2 are in draft form.
>
> Operational plans are used for day-to-day administration and allocation of Crown land. They provide detailed classification of Crown lands, generally by quarter-section, that allow staff to issue permits and leases reflecting the highest and best use of the land. The CLCC has classified approximately fourteen million acres of Crown land in southern Manitoba and annually publishes an updated "Interdepartmental Operational Crown Land Plans Report".

The other aspect of the CLCC's work relevant to this review is its role in dealing with appeals of a refusal to sell agricultural Crown land. It is dealt with below.

C.9 Manitoba Agricultural Credit Corporation

The Manitoba Agricultural Credit Corporation also sells or leases land that it has acquired by mortgage default or voluntary surrender. The Corporation advertises for tenders with a reserve bid. The reserve bid is set by opinions of value established by the corporation's land valuation staff.

D. The Sale or Other Disposition of Crown Land

Sales of Crown land are handled mainly be two branches: Lands Branch and LMS. The detailed procedures they use for disposition are set out in Appendices C and D respectively. A brief description of the more important aspects of the policies follows.

Sales or other dispositions are initiated differently in each branch. For example, sales or other dispositions by the Lands Branch are usually triggered by an applicant applying to purchase Crown land or by the branch deciding to offer land, usually cottage lots, for sale. On the other hand, sales by LMS are normally initiated by a department wishing to dispose of surplus land.

When sales or other dispositions are initiated, both branches circulate the proposed disposition widely to ensure

- the land is not required by a government department, municipal entity or for Treaty Land Entitlement purposes
- there is no other policy reason to prohibit sale

The entities on the circulation list are set out in Appendices C and D.

For lands dealt with by the Lands Branch, there are 39 approved reasons to refuse to sell. They are set out in Appendix E. Since land that LMS sells has already been declared surplus, the circulation determines if any other entities require the land.

If no objections or other uses are identified, the land is either sold to the applicant or offered for sale. Where the government is offering land for sale (that is, not responding to an applicant initiated request), the land will generally be offered by advertisement or tender with an allocation process used in case of over subscription.

If objections that meet policy stipulations are received, the sale is rejected. In the case of agricultural Crown land, the applicant is advised that the sale has not been approved and that an appeal may be filed. The CLCC reviews the appeal with the objecting agency. If the objection is withdrawn, the sale will proceed. If the objection is not withdrawn, the CLCC prepares a report for consideration of Cabinet.

In the case of non-agricultural Crown land, the Director advises the applicant that the sale has not been approved and that the applicant may request reconsideration by the Director of the Crown Lands Branch. The Director may seek comment from the CLCC or may

review the appeal with the objecting agency. If the objection is not withdrawn, the sale will not proceed. Under this system, there is no formal appeal mechanism.

For all sales, the L. G. in C. must establish price unless the value of the land is below an amount set in statute. Land is generally sold at appraised or assessed value although there may be adjustments for lessee improvements and forestry values.

A chart illustrating procedures used in selling and leasing land by the various entities is attached as Appendix F.

E. Issues and Comments

Earlier in the report, I noted the complexity of the Crown land system and competing interests. Over a number of years several policies and processes have been put in place to deal with these issues. While they appear to be working reasonably well, they need updating, clarification of the roles of the various players, and better coordination. As part of my interim report, I offer preliminary comment and suggestion to address these needs, followed by proposed next steps. It would be useful to obtain comment from senior government officials on these suggestions, proposed next steps, and areas in which further exploration is desired.

E.1 Revise the Crown Lands Act

The *Crown Lands Act* should be revised. The current act was first passed in 1934 and, I am advised, has not been revised completely since. Its regulation-making powers are rudimentary, leading to questions about the authority to make regulations. The piecemeal amendment process has led to inconsistencies such as the situation where the Director of Agricultural Crown Lands can issue leases for 50 years while the Minister of Conservation is limited to 21 year leases. The price for any Crown land sold under the act must be set by L. G. in C. while other acts give ministers the power to sell land valued at less than $25,000. The current method of designating agricultural Crown land is not compliant with the act. Given these points, I suggest that the Crown Lands Act be revised to make it consistent with other provincial legislation and current practices.

E.2 Consider a government philosophy for Crown land

The government should consider if it has an overall philosophy either in favour of or against the sale of Crown land. Officials have commented that it is up to the government to set policy but that they are not quite sure if there are policy leanings at this time. The formal setting of policies, or even the informal setting of policy through individual decisions, will affect the decisions that officials make in marginal cases. Some questions that might be considered:

- Is there a desire to increase the amount of Crown land available for agricultural use?

- Does the government wish to place more agricultural land in private hands to increase productivity?

- Does the government wish to encourage the sale of land in the north to encourage economic development?

- Does it wish to maintain Crown ownership and greater control of Crown lands?

E.3 Consider the need for an intermediary body

The government should consider the need for an intermediary body between officials and Cabinet. At this time, the CLCC reports directly to Cabinet, which deals with the pricing of land and is by default the appeal body for refusals to sell land. An intermediary body or bodies might perform three functions to assist Cabinet:

- coordinate policy development for approval by Cabinet
- provide recommendations on pricing for ratification by Cabinet
- decide appeals.

Each of these functions is dealt with below. Of the three functions, setting the sale price is the only duty of Cabinet required by the Act. All three functions do not necessarily need to be performed by the same entity. The main reason for suggesting examination of an intermediary body is to reduce the demands on Cabinet.

E.3.1 Consider the need for overall policy coordination

As has been noted, the development of policy for Crown lands is a complex process, involving many players. Given the complexity and the number of participants, there appears to be a need to coordinate the development of policy at the inter-departmental level. While the CLCC tries to coordinate policy for agro-Manitoba at the inter-departmental level and the BPCs do so at the local level, a large part of their work has become operational. In addition, it is also unusual to have a committee of officials reporting directly to Cabinet. Normally a committee such as this would report through a deputy minister and a minister.

At one time, I am told, the coordination of land use policy development was part of the PLUC duties. As noted, PLUC has not been reconstituted. The need for an entity to deal with land use and Crown land policies should be considered. Options to consider for overall policy development and supervision, subject to the final authority of Cabinet are

- Using a reconstituted PLUC

- Using the Interdepartmental Planning Board (a committee of Deputy Ministers established under the *Planning Act*)

- Designating a committee of assistant deputy ministers

Discussion may disclose other appropriate options.

In addition to coordination of policy development at the inter-departmental level, there is a need to coordinate policy development better with respect to Crown lands within the Conservation Department. Consideration should be given to designating an assistant deputy minister with policy development and administrative skills as being responsible for policy development concerning Crown lands. This person would guide policy development, helping resolve intra-departmental issues quickly; move issues that cannot be resolved internally to the appropriate decision makers; and ensure that all views were fully canvassed and appropriate external involvement considered.

E.3.2 Consider an appeal from a refusal to sell land

The question of whether there should be an appeal from a refusal to sell land should be considered. If it is decided that an appeal is necessary, a body besides Cabinet should be designated. Appeal processes to Cabinet are cumbersome and time consuming. The appeal process should apply to all sales.

Currently, if a government agency objects to a disposition of land, and the objection is within the policies set out to prohibit sale, the application is refused. The applicant can appeal but only if the land is agricultural Crown land. The appeal goes to Cabinet. There is no formal appeal from a refusal to dispose of non-agricultural Crown land.

The first issue is whether there needs to be an appeal from a refusal. Some have argued that no appeal is required as no rights are being affected. It is argued that there is no right to buy or lease Crown land. Others argue that people denied land will not stop at a refusal at the staff level but will make an informal appeal at the political level. Therefore, why not have a more consistent, formal, appeal process.

My preliminary view inclines toward the second argument. Citizens need to be assured that everyone is treated fairly and that the decision to dispose of land was made for the right reason. While the public may seek redress from the Ombudsman for the improper exercise of discretion, this is a long process that may not provide satisfactory relief even with a valid right. There is the precedent in the *Crown Lands Act* of the Agricultural Crown Lands Appeal Board that deals with a refusal to lease agricultural land. It may appear inconsistent to have an appeal board for leasing but not for sale. I will explore what other provinces are doing in this area. But whatever the final decision, it should apply to agricultural and non-agricultural land.

If it is decided that an appeal mechanism is required, the second question becomes to whom should the appeal be made? The department has prepared an options paper on possible appeal bodies. Some of the options identified are

- Cabinet
- A reconstituted PLUC

- A committee of ministers, (Conservation, Agriculture and Food, Intergovernmental Affairs, Industry Trade and Mines and Aboriginal and Northern Affairs)
- The Interdepartmental Planning Board
- A committee of MLAs

In addition, an independent appeal body such as the Agricultural Crown Lands Appeal Board, or some other new or existing independent body should be considered.

E.3.3 Consider if pricing by Cabinet is required in all cases

At this time, the act requires Cabinet to set the price for Crown land. One question to ask is, should every transaction have to go to Cabinet? Would Cabinet like to be relieved of some of this work? Other acts allow the sale of land under a certain value to be concluded by the minister. This approach, along with setting an appropriate value, should be examined, recognizing such a change would require an amendment to the Act.

Without an amendment, Cabinet must continue pricing, but perhaps a sub-committee could be used to facilitate smooth processing. For example, perhaps Treasury Board could be used. Another alternative would be to use another intermediate body, with Cabinet ratifying the decision.

Sales now take a long time to process and staff members have noted that clients are frustrated. Part of the length of time the process takes may be related to the need for Cabinet approval for pricing. With appropriate policies and oversight in place, Cabinet may feel more comfortable in allowing sales to proceed with less involvement.

E.4 Consider administrative issues and updated, clarified roles

A number of issues identified involve updating mandates and roles, role clarification and administrative practices. They are dealt with below.

E.4.1 Review Crown Lands Classification Committee's mandate

The role and mandate for the CLCC was establish by a memo in December of 1975. The role and mandate needs to be reviewed, and if necessary revised, confirmed and adopted.

The tensions that led to the establishment of the CLCC continue to exist. I note for example, that Agricultural Crown Lands has an aggressive aspen control program while Forestry told me that they need all the aspen that they can get to fulfill the government's agreement with Louisiana Pacific. The two branches are working together to solve this, but I thought that it illustrated the issue.

The CLCC process seems to work well in managing the tensions. Those who participate, while sometimes frustrated, seem to value it as a forum to solve land-use classification problems. It provides a means for local-level use coding of Crown lands. But its founding memo is over 25 years old. The memo should be reviewed and written as an appropriate

mandate and formally adopted. The duties of the committee should be considered and described. As noted above, the CLCC should report to a body or person between it and Cabinet.

The process of setting CLCC policies, especially those allowing objections to dispositions, needs to be more efficient. Equally important, internal disagreements should be resolved through a review by the supervising body.

Furthermore, consideration should be given to whether the CLCC, with appropriate additions, or a similar body, could perform similar functions in northern Manitoba.

E.4.2 Clarify Roles of LMS and the Lands Branch

The government should consider whether a clearer set of guidelines can be developed to clarify the roles of LMS and Lands Branch. There appears to be confusion over the roles of Land Management Services and the Lands Branch that needs to be clarified. A senior civil servant noted, "I don't know what the roles of LMS and the Lands Branch are, how they are the same and how they differ." Coincidentally, an October 1970 submission to Management Committee of Cabinet concerning the disposal of surplus noted that "with several departments and agencies empowered by existing legislation to dispose of surplus property, there is no central inventory of, nor control over disposal of such property, to ensure that it may not be required under long range plans for any government purpose, or that it is being put to most advantageous use."

As an attempt to deal with this confusion, the submission from the departments of Mines and Natural Resources, Government Services and Transportation recommended

> "That government departments and agencies be instructed to:
>
> a) Place all surplus crown lands under administration of Lands Branch, Department of Mines and Natural Resources; or, where this is impractical,
>
> b) Report all such surplus lands to the Lands Branch Department of Mines and Natural Resources, for inventory control and centralization of information.
>
> That, in future, all recommendations for disposal of land, regardless of value, be referred to Management Committee for approval; recommendations concerning parcel of land valued at $10,000 or more to be referred with Lands Branch appraisal, to the Land Value Appraisal Commission for recommendation to Management Committee."

In addition, the General Manual of Administration tries to provide guidance by stating that departments that do not have the authority to dispose of property must do so through LMS, unless their statute provides otherwise.

As we can see from the comment of the senior official, confusion still exists although there has been improvement. At this time, there are two main agencies that deal with the sale of land, although there are more that lease land. Both have processes in place to ensure that land required by government is not sold. These processes appear to work well, but I was informed of one occasion when it appears circulation did not occur.

E.4.3 Reinforce use of the Crown Lands Registry

It is important that the public be able to know what category land falls into and who has jurisdiction over specific land. I am told that it is sometimes very difficult to find that information even for government departments because of all the different statutes applicable to Crown land. Sometimes the information is in the Crown Lands Registry and at other times in the files of Land Management Services.

The Registry should be mandatory for all encumbrances, dispositions, and designations of Crown land. Given the expertise in the Land Titles branch in maintaining a registry system, the Lands Branch may wish to investigate whether there is any advantage in collaborating with Land Titles to maintain the Registry.

E.4.4 Improve transparency of the Crown lands system

The system of administering Crown lands across government is not transparent. Those working in the system understand it, but for someone without experience it is difficult to comprehend. At the very least, improved transparency should involve posting all policies on departmental web sites with links to the relevant statutes and regulations. Agriculture has made good efforts in this respect.

E.4.5 Review consistency of cottage lot pricing

The department should review the consistency of rental prices of cottage lots administered by the Lands Branch and those administered by Parks. By regulation, Lands branch charges 4% of current appraised value plus taxes. By regulation, Parks charges 4% of the 1981 appraised value plus service fees. In some cases, the value of the land has increased significantly, meaning the rents charged by Lands Branch and Parks may not be consistent for properties of similar value.

E.4.6 Review the treatment of lodges

Making land available for and licensing lodges and outfitters presents a special issue. One body licenses them, but they must sometimes acquire land from another. The department is trying to integrate these processes. There is, however, an internal departmental debate over how land should be made available. Most agree that, in an ideal world, land for a lodge would be identified and calls for proposals issued. This would allow all to participate. Some argue that this would not work as it puts the government in the position of identifying suitable sites which is not practical. Similarly, it is argued that the suggestion to advise a potential purchaser that a call for proposal would need to be issued

for the land, as Forestry does for a timber quota purchaser, is unlikely to work because operators would not want to disclose their proposed sites.

This issue needs further examination in light of the practice of issuing exclusive licences. Although other land dispositions might occur on a lake, I understand that some lakes have been categorized as pristine lakes, which appears to give lodge operators some exclusive rights to the lake. This right can conflict with the public's ability to use other portions of land surrounding the lake and with TLE selections. The department is currently discussing this issue at the directors' level. Some argue that exclusivity is necessary because of the economic benefits generated. The origin of the exclusivity policy is unclear, as is the economic impact of job creation and tax revenue.

Questions that arise concerning lodges are:

- What representations concerning exclusivity have been made?
- Under what authority were they made?
- What lakes are covered? How many lakes? What size are the lakes?
- What are the economic benefits to the province from these lodges?
- What are the impacts of the exclusivity policy on the TLE process and the economic development prospects of northern First Nations?
- What would the impact be on the lodges of other uses on the lakes?
- Should the policy continue?

Supposedly, a part of the rationale for the exclusivity policy was the fishing capacity of the lakes. Others have argued that catch and release programs have made this less of an issue. In any event, it is an issue that deserves a comprehensive review, because it is likely to become more important in the future as the competition for multiple uses of resources in the north intensifies.

F. Next Steps

I suggest that I take the following next steps in preparing the final report:

1. Meet with senior government and Conservation Department officials to obtain comment on the interim report.
2. Review the Auditor General's draft report when it is provided. The Auditor General's review of the Hecla/Grindstone Provincial Park resettlement program and the sale and leasing of the Gull Harbour Marina is expected before the end of this year. Given the resources dedicated to the review and that the Auditor may

comment more widely than on these specific transactions, I suggest my final report be made once I have reviewed his draft report.

3. Continue inter-jurisdictional comparisons.

4. Review and comment on the Crown Land Administrative Review Committee Report in a separate report.

5. Prepare final report.

Appendix A

Terms of Reference

Background:

- The lease and sale of Crown Lands in Manitoba has been governed by a number of policy and procedural mechanisms, most notably the Crown Lands Classification Review (CLCR) policy and process.

- Despite the presence of fairly comprehensive policy frameworks such as the CLCR, there have been several instances where full consideration has not been given to more recent government sustainable development policies including policies in water, wildlife, forestry and protected areas. It has also become apparent that updated policies and procedures are needed to ensure that the Province is receiving full value for the disposition of Crown land and other property. Finally, it appears that the CLCR process is not fully transparent to the public nor are full descriptions of individual sales and leases clearly laid out for Cabinet.

- To this end the department has taken several steps towards a more transparent and accountable process:

➢ The Minister requested that a review of Crown Lands procedures be conducted and an internal review process began in June of 2001 that included department officials from Conservation, Agriculture and Aboriginal and Northern Affairs. The final report was completed in the winter of 2002. It should be noted that reviews of Provincial Land Use Policies and Agricultural Land Use Policies took place at the same time as this review. Recommendations from the review covered tenure, land valuation and pricing, allocation, applications and procedures.

➢ The Minister of Conservation directed changes to policy to stop remote leases and sales. In addition, it has been directed that a new process be put in place to ensure that opportunities for the lease or sale of Crown Lands are available to all Manitobans on an equal basis.

➢ The Minister of Conservation requested that a more thorough analysis/description of Crown Lands transactions accompany Cabinet submissions in the form of an impact statement modeled after the standard form for regulations. The forms will include, but not be limited to, the reason for the proposed disposition, public benefits and possible higher uses, potential land use conflicts, consistency with sustainable development policies and financial implications.

- While internal recommendations have been made on Crown Lands policies the Manitoba government has determined that it is in the public interest to have a third

party review of the internal reviews of Crown Lands policy as well as existing practices and procedures.

Terms of Reference:

The services to be provided by the Consultant are as follows:

- Provide recommendations that will assist the government in applying due diligence to transactions concerning the sale, lease or other disposal of real property or fixtures owned by the province of Manitoba in a way that best protects the interests of the Manitoba public and the principles of sustainable development.

- Review existing policies and procedures (and the legal framework for such policies and procedures), conduct interviews and may review any files or correspondence deemed necessary to assess the application of existing policies and procedures.

- Review policies and procedures in other jurisdictions for comparative purposes.

- Prepare and provide a separate report which will comment on, endorse, reject or add to the recommendations provided by the internal review committee and provide other recommendations as required.

- Provide an interim report to the Minister of Finance no later than November 15, 2002 and a final report no later than January 1, 2003.

Appendix B

Interviews Conducted

Conservation

Norm Brandson, Deputy Minister
Serge Scrafield, Assistant Deputy Minister
Dave Wotton, Assitant Deputy Minister
Harley Jonasson, Director, Lands Branch
Gordon Jones, Director, Parks and Natural Areas
Jeff Colpitts, Head, Commercial Operations
Don Cook, Director, Forestry
Jeff Delaney, Forest Practices Forester
Jack Dubois, Director, Wildlife
Glen Suggett, Wildlife Lands Specialist
Bill Barto, Secretary, Crown Lands Classification Committee
Blair McTavish, Director, Sustainable Resource Management
Chris Vogel, Resource Planner, Sustainable Resource Management
Steve Topping, Director, Water
Lyle Campbell, Regional Lands Manager

Transportation and Government Services

Gerry Berezuk, Deputy Minister, Government Services
Ray Csversko, Chief Operating Officer, Land Management Services
Rod Kent, Manager, Sales and Leasing, Land Management Services
Lawrence Mayer, Assistant to the C.O.O.
Fasil Bacchus, Property Administrator

Agriculture and Food

Don Zasada, Deputy Minister
Barry Todd, Assistant Deputy Minister, Management and Regional Agricultural Services
Brent McCannell, Director, Agricultural Crown Lands
Robert Fleming, Manager, Program Delivery, Agricultural Crown Lands
Gil Lahaie, Chief, Agro-Land Planning & Management, Agricultural Crown Lands
Karen McEachen, Manitoba Agricultural Credit Corporation

Industry, Trade and Mines

Ernie Armitt, Director, Mines
Sheena Shetty, Chief Mining Recorder

Chuck Jones, Resource Management Geologist
Bob Dubreuil, Director, Petroleum branch

Intergovernmental Affairs

Marie Elliott, Deputy Minister
Heather MacKnight, Assistant Deputy Minister, Community & Land Use Planning

Appendix C

Crown Land Sales Procedures

Introduction

Lands Branch's review and approval processes for Crown land permits, leases, licences, easements, exchanges, and assignments are similar to the sales process outlined below.

Permits, leases, licences, easements and assignments follow the first eight steps of the process. Sales and exchanges follow the entire process except where a sale application is a non-agricultural sale no allowance is made for a formal appeal.

Agricultural permits and leases are administered by MB Agriculture and Food.

Review and Approval Process

1. Eligibility check
   - Applicant eligibility
   - Application properly completed.
   - Land use allowed under policy.
   - Land checked to see if already encumbered.

2. Paper file is created and application is set up on the Crown Land Registry system.

3. Letter of acknowledgment is sent to applicant.

4. Application is circulated to applicable agencies in list below for response within 20 working days:

   a) MB Conservation Forestry Branch.
   b) MB Conservation Fisheries Branch
   c) MB Conservation Wildlife Branch
   d) MB Conservation Water Branch
   e) MB Conservation Parks Branch
   f) MB Conservation Sustainable Resource Management Branch.
   g) MB Conservation Aboriginal Relations Branch
   h) Treaty Land Entitlement (TLE) Section of Lands Branch
   i) MB Conservation Environmental Approvals/Petroleum Storage Program
   j) MB Conservation Regional Integrated Resource Management Team (IRMT)
   k) Block Planning Committee (BPC) for applicable region.
   l) Licencing Advisory Committee (LAC)
   m) MB Food and Agriculture Crown Lands Branch
   n) Rural Municipality
   o) Planning District
   p) Conservation District

q) MB Aboriginal and Northern Affairs Regional Branch
r) Community Council (if in Northern Affairs region)
s) MB Industry Trade &Mines Mines Branch
t) MB Transportation and Government Services
u) MB Intergovernmental Affairs
v) MB Culture Heritage & Tourism - Historic Resources
w) MB Culture Heritage & Tourism - Tourism Policy and Development
x) MB Hydro
y) Manitoba Telecom Services

5. During circulation process, Lands Branch

   a) Conducts title search.
   b) Checks assessed/appraised value of land.
   c) Verifies legal description of land with Survey Services
   d) Requests forestry value.

6. Comments received through circulation process are compiled and summary report submitted to Land Administrator.

7. Land Administrator reviews summary report and makes recommendation supported by confirmation that recommendation is in accordance with applicable policy and legislation.

8. Lands Operations Section manager reviews and submits for Director approval.

   If no concerns/objections have been expressed, the process moves to Step 12.

9. If concerns/objections are expressed, file is copied and forwarded to the Crown Land Classification Committee (CLCC).

10. CLCC reviews objections against PLUC Policy.

11. If CLCC denies sale, Lands Branch is notified.

12. Lands Branch advises client of rejected sale and advises of right of appeal.

13. If CLCC approves sale, Lands Branch is notified.

14. Lands Branch prepares a draft Order In Council (OIC), Briefing Notes and Impact Statement.

15. OIC is circulated to Directors of Regional Operations and Sustainable Resource Branches, and ADMs for Programs, Operations and Corporate Services Divisions for sign-off.

16. OIC is finalized and sent to Civil Legal Services for approval.

17. OIC sent to Deputy Minister's office.

18. Upon Cabinet approval of the OIC, client is advised of approval and sent two copies of a Sale Agreement for execution. The applicant is advised of any pre conditions that must be satisfied prior to transfer of the land and requested to submit full payment.

19. Upon receipt of payment and proof that all conditions have been met, a Land Transfer is prepared and forwarded to the client for registration at Land Titles Office.

Appeal Process

If a sale application is denied and the applicant exercises his/her right of appeal,

a) Client sends letter of appeal to Director of Lands.

b) Appeal is forwarded to CLCC.

c) CLCC reviews with objecting agencies.

d) If objections are withdrawn, CLCC notifies Lands Branch and the sale process proceeds as in Step 12.

e) If objections are not withdrawn, an appeal report is prepared and forwarded to the Provincial Land Use Committee of Cabinet (PLUCC) for a final decision.

Appendix D

Land Management Services Sales Procedures

1. Upon Land Management Services (LMS) receiving a client request to dispose of surplus departmental land, a circular is forwarded to government departments and agencies to determine whether or not there is further provincial requirements for the property.

   Note: LMS' disposal fees and associated disbursements are deducted from the property's sale revenue; if sale does not close then LMS' disposal fees and disbursements are to be paid to LMS by the authority which declaring the property surplus and available for sale.

2. (a) After determining there are no further provincial requirements, the local municipal authorities (Municipality and local School Division) are circulated to determine if there is municipal interest in the property.
   (b) Request Appraiser for opinion of the property's estimated market value.

3. Negotiate the sale of the surplus land to the municipal authority on the basis of the province receiving the property's estimated market value.

4. If the municipal authorities are not prepared to acquire the property (see 3) those properties situated in Rural Manitoba may be offered for sale to the adjacent property owner on the basis of the province receiving the property's estimated market value setting out any limiting conditions that will affect the use of the property.

5. Provided that the adjacent landowner is not prepared to acquire the property (see 4) the property is offered for sale to an Entitlement First Nation on the basis of the province receiving the property's estimated market value, setting out any limiting conditions that will affect the use of the property.

6. If an Entitlement First Nation is not prepared to acquire the property (see 5) the property is offered for sale to the public at large setting out any limiting conditions that will affect the use of the property, using the following methods of advertise:
   (a) Advertisement placed in the newspaper(s) inviting Offers
   (b) For Sale signs placed on the property
   (c) Property added to LMS' surplus property inventory Website – www.landmgmt.gov.mb.ca

7. (a) Interested persons are invited to make offers to LMS within a defined time frame, following which the Offers will be evaluated to determine the Net Purchase Price under each Offer (see Evaluation Criteria below)
   (b) Offer forms are to be in a form prescribed by LMS
   (c) Offers received after the time period set out in the advertisement will be evaluated notwithstanding the conditional acceptance of an earlier Offer, provided that the

Purchaser in the conditionally accepted Offer has not waived financing and property condition concerns as may be stipulated in the conditionally accepted Offer

(d) Each Offer form includes provision for the Purchaser to be provided 2 business days after receiving notice that a better Offer has been received for the property (see Evaluation Criteria below) to:
    (i) Waive any financing condition and accept the property's condition respecting environmental hazards, structural integrity and land survey and
    (ii) Match the Purchase Price in the new Offer

(e) Acceptance of an Offer by LMS is conditional on final approval to the sale being provided by the L.G. in C. or the appropriate Minister of the government having Statutory authority are subject to the following conditions provided by the Purchaser:
    (i) A maximum of 5 working days to confirm that satisfactory financing has been approved
    (ii) A maximum of 45 working days to review and accept the property's condition respecting environmental hazards, structural integrity and land survey

8. LMS will put forward a recommendation for final approval to authorize the sale of the property by the L.G. in C. or the appropriate Minister of the government having Statutory authority

9. Once a Purchaser waives conditions relating to financing and accepts the property's condition respecting environmental hazards, structural integrity and land survey as provided for above, any subsequent Offer will not be considered pending the L.G. in C. or the appropriate Minister of the government having Statutory authority direction to finalize the sale or otherwise

10. LMS communicates the decision of the L.G. in C. or the appropriate Minister of the government having Statutory authority, to the Purchaser

Appendix E

Reasons for Disapproving Crown Land Sales (To October 7, 2002)

A. DISAPPROVED BY A LOCAL PLANNING AUTHORITY

1. Crown land disapproved for sale by the Local Council or Planning District Board.
2. Crown lands disapproved for sale by the Watershed Conservation District Board.

B. CROWN LANDS WITH LOW AGRICULTURAL POTENTIAL

3. Crown lands with C.L.I. capability of Class 6 or 7 for agriculture.

C. CROWN LANDS REQUIRED FOR PUBLIC PURPOSES

4. Crown lands identified for future highway purposes; sand, gravel, granular sources, road re-location, borrow material, or highway widening.
5. Crown lands identified within the Lake Winnipeg Water Power Storage Reserve, McArthur Water Power Licence Area, proposed Dauphin River Water Storage Reserve.
6. Crown lands identified for water works purposes (e.g., located along the Portage Diversion, adjacent to overflow reach of the Diversion, waterworks rights-of-way, flood control works Garden on Floodway).
7. Crown lands under study, and may be required for future water control works.
8. Crown lands required for future local government purposes, i.e., nuisance grounds, waste storage area.

D. CROWN LANDS REQUIRING PROTECTION DUE TO INSTABILITY, EROSION, FRAGILITY, HAZARD, ETC.

9. Crown lands subject to flooding by less than two year flood along a stream where flooding seldom extends into the growing season, would not be available for sale.
10. Crown lands subject to flooding by less than a five year flood along a stream where flooding frequently extends into the growing season, would not be available for sale.

11. Crown lands adjacent to lakes would not be approved for sale where the frequency of flooding is estimated to be 10 years or less.
12. Crown lands identified as within Polder III and IV Pasquia which have a history of flooding. Located near the water retention area with elevations below the full supply levels of the retention site and/or needed for water control works.
13. Crown lands identified as a water catchment or retention area.
14. Crown lands identified for watershed management and protection.
15. Crown lands identified as marsh or bog or fen or slough.
16. Crown lands identified as subject to potential excessive erosion (e.g., steep slopes; bank instability; soils in the dune phase, complex topography, i.e., escarpment areas).
17. Crown lands to be retained for the protection of water quality and supply of downstream users.
18. Crown lands to be retained because of potential downstream flooding problems.
19. Crown lands identified as subject to localized flooding.
20. Crown lands with a major drainage problem (e.g., part of an area which is basin like and until drainage can be installed should not be sold).
21. Crown lands identified as requiring road and drainage infrastructure and too difficult and costly to install.

E. REQUIRED FOR RESOURCE MANAGEMENT PURPOSES

Fisheries

22. Crown lands identified for fisheries habitat protection, that is protection of spawning habitat, nursery areas, protection against silt and nutrient loading (e.g., Mantagao River System, Point River, Red Deer Lake, German Creek, Waywayanagan River and Pine River Marsh, Garland Creek, Assiniboine River).

Forestry

23. Crown lands identified for forestry purposes (e.g., Class 4 white spruce site, tree plantation).
24. Crown lands identified as a possible addition to a Provincial Forest (e.g., Spruce Woods).
25. Crown lands identified as an island which have value as a forestry seed source in case of forestry disaster.
26. Crown land identified a) to be more than 50% hardwood forest cover, and is Canada Land Inventory (CLI) Class 3,4, or 5 for forestry.

Mines

27. Crown lands identified as having mineral potential (e.g., potential quarrying sites – dolomite; area provides aggregate material at a lower cost; industrial minerals source of high potential, contains substantial sand and gravel deposit).

Recreation

28. Crown land identified for expansion of recreational park.
29. Crown lands identified as an island with recreational value.
30. Crown lands identified for cottage development.
31. Crown lands identified as having potential archaeological significance.
32. Crown lands identified as Class 2 recreational shoreline.
33. Crown lands identified as Class 3 recreational beach.

Wildlife

34. Crown lands identified as high capability wildlife habitats in areas of extreme habitat loss or at risk to loss of habitat capability. Wildlife travel corridors, wintering areas, waterfowl production and staging areas, and critical, unique or sensitive habitats, are the areas of primary concern.
35. Crown lands identified as a proposed Wildlife Management Area, proposed addition to a WMA or an existing WMA. Public Shooting Ground, Refuge, Ecological Reserve or Ecologically Significant Area, or Crown lands purchased for wildlife habitat under previous or existing land assembly programs.
36. Wildlife project areas, including Ducks Unlimited projects, Habitat Heritage Program projects, Wildlife Habitat Canada projects, Heritage Marshes, Deer Habitat Program projects, North American Waterfowl Management Plan target areas, H.E.L.P. area, Prairie Conservation Action Plan areas and Critical Wildlife Habitat Program projects.

F. CROWN LANDS TO BE RETAINED DUE TO ACCESS CONCERNS

37. Crown lands required for access to other lands or to shorelands for public use.
38. Crown lands identified as lacking sufficient physical road access.

G. CROWN LANDS IDENTIFIED FOR HIGHER AND BETTER PURPOSES

39. Crown lands identified as prime commercial/industrial site.

Appendix F

COMPARATIVE DISPOSITION METHODS

BRANCH/ Land Use Category	General Land Uses	Disposition	Pricing Method	Application Initiation	Allocation Method	Advertising	Approval Authority
CROWN LANDS BRANCH							
Cottage Subdivisions	Cottages	Permit, Lease, Sale	Rental fees set by Regulation- 4% of appraised value. Sale pricing by appraised or assessed value . Initial Development fees may apply.	Initially new subdivision lots offered by gov't. Unallocated lots first come basis	Initially allocated by public draw. Unallocated lots available on first come basis.	Yes	Permit/Lease - Minister Sale - LGC
Commercial Tourism	Lodges, etc.	Permit, Lease, Sale	Rental fees set by Regulation- 4% of appraised value. Sale pricing by appraised or assessed value . Initial Development fees may apply.	Applicant	First come basis	No	Permit Lease - Minister Sale - LGC
Agriculture	Agriculture	Sale	Appraised or assessed value	Lessee	Restricted to existing Lessee	No	Sale - LGC
Residential	Housing	Permit, Lease, Sale	Rental fees set by Regulation- 4% of appraised value. Sale pricing by appraised or assessed value . Initial Development fees may apply.	Applicant	First Come basis	No	Permit Lease - Minister Sale - LGC
Power/Water/MTS	Underground Lines	Easement	Set by Regulation	Applicant	First Come basis	No	Minister
Commercial	Businesses	Permit, Lease, Sale	Set by Regulation	Applicant	First Come basis	No	Permit Lease - Minister Sale - LGC
Recreational Development	Cottage Subdivisions Recreational uses	Lease or Sale	Reserve price at appraised/assessed value. Highest tender or offer.	Offer by Government. Point system	Public tender or Call for Proposals	Yes	Lease - Minister Sale - LGC
AGRICULTURAL CROWN LANDS							

Appendix F

COMPARATIVE DISPOSITION METHODS

BRANCH/ Land Use Category	General Land Uses	Disposition	Pricing Method	Application Initiation	Allocation Method	Advertising	Approval Authority
CROWN LANDS BRANCH							
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Commercial Tourism	Lodges, etc.	Permit, Lease, Sale	Rental fees set by Regulation- 4% of appraised value. Sale pricing by appraised or assessed value . Initial Development fees may apply.	Applicant	First come basis	No	Permit Lease - Minister Sale - LGC
Agriculture	Agriculture	Sale	Appraised or assessed value	Lessee	Restricted to existing Lessee	No	Sale - LGC
Residential	Housing	Permit, Lease, Sale	Rental fees set by Regulation- 4% of appraised value. Sale pricing by appraised or assessed value . Initial Development fees may apply.	Applicant	First Come basis	No	Permit Lease - Minister Sale - LGC
Power/Water/MTS	Underground Lines	Easement	Set by Regulation	Applicant	First Come basis	No	Minister
Commercial	Businesses	Permit, Lease, Sale	Set by Regulation	Applicant	First Come basis	No	Permit Lease - Minister Sale - LGC
Recreational Development	Cottage Subdivisions Recreational uses	Lease or Sale	Reserve price at appraised/assessed value. Highest tender or offer.	Offer by Government. Point system	Public tender or Call for Proposals	Yes	Lease - Minister Sale - LGC
AGRICULTURAL CROWN LANDS							

COMPARATIVE DISPOSITION METHODS

Cropping Leases			Tender	Government offer	Highest Bidder	Yes	
Forage Leases			Market Survey	Government offer	Point system	Yes	
PARKS BRANCH							
Cottage Lots	Cottages	Lease	Set by Regulation - 4% of 1981 appraised value	Initially new subdivision lots offered by gov't. Unallocated lots first come basis	Initially allocated by public draw. Unallocated lots available on first come basis.	Yes	Minister
Commercial	Business		Tender	Government offer	Best Bid	Yes	Minister
FORESTRY BRANCH							
Forest Licenses, etc		Licence	Tender or Reg.	Government offer	Highest Bid	Variable, normally yes	
Other(summer resid.)							
MINES BRANCH							
Surface Leases		Lease	$5.00/hectare	Mineral rights holder application	N/A	No	
MACC							
MACC Sales	Agriculture	Sale	Tender	Government offer	Highest Bid	Yes	
LAND MANAGEMENT SERVICES							
Commercial	Business	Sale	Tender/Appraisal	Government offer	Highest Bid	Yes	LGC/Minister
Vacant land	Agriculture	Sale/Lease	Tender/Appraisal	Government offer	Highest Bid	see below	LGC/Minister

Note: LMS may offer land for sale or lease to an adjoining land owner